

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6604  
PETITION OF JDB INVESTMENT GROUP, LLC**

**OPINION OF THE BOARD**  
(Hearing Held: February 13, 2019)  
(Effective Date of Opinion: February 28, 2019)

Case No. A-6604 is an application by JDB Investment Group, LLC ("the Petitioner"), the sole owner and managing member of which is Jeffrey S. Dawson, for variance relief necessary to construct a second story and side addition on an existing home. The proposed construction requires a variance of fifteen (15) feet, as it is within twenty-five (25) feet of the front lot line. The required setback is forty (40) feet, in accordance with Section 59-4.4.7.B.2 of the Zoning Ordinance.

The Board of Appeals held a hearing on the application on Wednesday, February 13, 2019. Petitioner's architect, Eric Saul, appeared at the hearing as an authorized agent of the Petitioner, in support of the variance.

Decision of the Board:                      Variance **GRANTED**.

**EVIDENCE PRESENTED**

1. The subject property is Lot 15, Block 6, Meadowood Subdivision, located at 12719 Meadowood Drive, Silver Spring, Maryland, 20904, in the R-200 Zone. The property is a rectangular lot, approximately 130 feet in width by 180 feet in length, with a total area of 23,400 square feet. The Petitioner purchased the subject property in 2018.
2. The Justification Statement ("Statement") indicates that the property contains an existing house, built in 1953, which is located in the front right corner of the property and sits "25' from the west (front) property line and 14' from the south (side) property line." It further states that the "rear half" of the property is "unbuildable due to dense forest and a creek bed." See Exhibit 3.

3. The Statement indicates that the location of the existing house within the 40-foot front setback is not unusual, stating that "14 of the 18 houses on this block of Meadowood Drive sit within the 40' front setback so effectively the setback is actually the exception, not the rule." The Statement later notes that if the variance were granted, there would be no impairment to the intent and integrity of the general and master plans, since "the addition would maintain the frontage found throughout the entire block and surrounding neighborhood. See Exhibit 3.

4. In describing the proposed construction, the Statement indicates that "[t]he proposed 2<sup>nd</sup> story addition to the existing structure will maintain the existing footprint of the house. Granting a variance to locate the new two-story addition to the north, will allow an addition to not negatively impact the neighbor to the south," having previously noted that "[t]he proposed addition would sit 56' from the north (side) property line. Therefore, the addition will not negatively affect the neighbor." See Exhibit 3.

5. The Board is in receipt of a letter from Dan Wilhelm, President, Greater Colesville Citizens Association, supporting the grant of this front lot line variance to allow the proposed expansion of this home "since the proposed construction is not moving the house any closer to the street." See Exhibit 9.

6. At the hearing, Eric Saul, the Petitioner's architect, testified that although this is a relatively large lot, the existing house was built in the front corner, crowded towards the right side. He testified that there is a large downward sloping hill behind the existing house, and that the area is wooded. Mr. Saul testified that only four houses on the street are set back from the front lot line the required 40 feet, noting that some are set back 25 feet like the house on the subject property, and that the average setback is probably just over 30 feet. Mr. Saul testified that the proposed construction will follow the front line of the existing house, possibly bumping back a couple of inches, and that the proposed front porch will be open.

Mr. Saul testified that pushing the proposed side addition farther back to meet the required front lot line setback would make the tie-in to the existing house extremely tight, and would push the addition back into the hill. He stated that the property drops approximately 12 feet from the street to the back of the existing house. The site plan shows that the topography continues to fall behind the existing house. See Exhibit 4(a). Mr. Saul testified that as a result of the property's steep topography, locating the addition farther back on the property, in compliance with the required setback, would result in the addition being very tall, noting that as planned, the driveway will already require a retaining wall. Mr. Saul testified that placing the addition in compliance with the 40-foot front lot line setback would also encroach on and likely harm existing trees, and would increase the amount of impervious surface on the property due to the extension of the driveway. Mr. Saul noted that putting the addition on the opposite (right) side of the existing house would further crowd the neighboring property on that side with a structure that would be very large and very tall. He testified that his client sent letters to all of the neighbors explaining his plans, and that none have expressed opposition, noting that the

neighbor on the right side is happy with the proposal, which would also entail removal of the driveway on that side and the installation of trees.

## FINDINGS OF THE BOARD

Based on the binding testimony and evidence of record, the Board finds that the requested variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;*

The Board finds, based on the testimony of record and the site plan at Exhibit 4(a), that the subject property, and most notably the rear of the subject property, is encumbered with a steep slope which, when coupled with the "dense forest and creek bed," likely caused the existing house to be located forward of the front lot line setback, and which would necessitate that any addition to the rear of the existing home be very tall in order to tie in with the existing home. The Board finds that this is an exceptional topographical condition peculiar to this property, and accordingly finds that the property satisfies this element of the variance test.

*Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds that the existing house, which was built in 1953 and encroaches on the required front lot line setback, is a nonconforming structure. The Board further finds that the proposed construction uses this structure. Accordingly, the Board finds that the application satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioner purchased the subject property in 2018, and therefore is not responsible for the nonconforming location of the existing 1953 home on this property, or for the property's topography.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds, based on the testimony of Mr. Saul and on the Justification Statement in the record at Exhibit 3, that the requested fifteen (15) foot variance, which would allow the proposed second story and two-story side additions on this home at a distance no closer to the front lot line than the existing house, is the minimum needed to allow use of the existing nonconforming house and to avoid the topographical constraints

in the property's rear yard, and thus to overcome the practical difficulties that would otherwise be imposed by compliance with the setback restrictions of the Zoning Ordinance.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that the proposed construction will continue the residential use of this property, consistent with the recommendations of the White Oak Master Plan, which seeks to protect and reinforce the integrity of the existing neighborhoods.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds, per the testimony of Mr. Saul and the Justification Statement, that the proposed second story addition will use the footprint of the existing house, and that the proposed two-story side addition will be located on the north side of the existing house at a distance of 56 feet from the north (side) property line. The Board finds, per the Justification Statement, that the siting of this proposed construction is sufficient to avoid an adverse impact on the neighbor to the north, and avoids bringing this house any closer to the shared side lot line to the south than it already is (14 feet). The Board notes that the record contains a letter of support for the grant of this variance from the Greater Colesville Citizens Association, and that Mr. Saul has testified that letters regarding the proposed construction were sent to surrounding neighbors and that no opposition has been received. Thus the Board finds that the grant of the requested variance will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance is **granted**, subject to the following conditions:

1. Petitioner shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

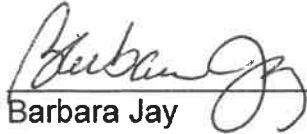
Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Katherine Freeman, with Stanley B. Boyd, Vice Chair, and Bruce Goldensohn in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.



John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 28th day of February, 2019.

A handwritten signature in cursive script, appearing to read "Barbara Jay", is written over a horizontal line.

Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

